

FACTUAL HISTORY

The case was on a prior appeal with respect to a schedule award for the right arm.² As the Board noted in its October 22, 2012 decision, the Board set aside the December 7, 2011 OWCP decision affirming a schedule award for a two percent right arm impairment, finding that the opinion of Dr. Michael Wujciak, a Board-certified orthopedic surgeon, was not sufficient to resolve the conflict. The history of the case provided by the Board in the October 22, 2012 decision is incorporated herein by reference.

With respect to the left arm, the May 24, 2011 report from Dr. Wujciak stated, “I have concluded the grade 1 modifiers as being 0 to 1 regarding test, 0 to 1 regarding history and 0 regarding physical findings. This would put the grade modifiers at 0 to 1, which would lead to a left upper extremity impairment of 0 to 0.33, which when rounded out as per instructions equals a 0 left upper extremity permanent impairment.”

The case was referred to an OWCP medical adviser for review. In a report dated June 9, 2011, the medical adviser stated that there was no ratable left arm impairment. According to the medical adviser, “if you have a normal physical exam[ination], there is no impairment” and Table 15-23 cannot be used.

By decision dated October 25, 2011, OWCP found that appellant was not entitled to a schedule award for the left arm. In a decision dated May 7, 2012, an OWCP hearing representative affirmed the October 25, 2011 decision. The hearing representative found that the weight of the evidence was represented by Dr. Wujciak.

LEGAL PRECEDENT

Section 8107 of FECA provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.³ Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.⁴ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁵

² Docket No. 12-1084 (issued October 22, 2012).

³ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

⁴ *A. George Lampo*, 45 ECAB 441 (1994).

⁵ FECA Bulletin No. 09-03 (issued March 15, 2009).

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.⁶ In Table 15-23, grade modifiers levels (ranging from 0 to 4) are described for the categories test findings, history and physical findings. The grade modifier levels are averaged to arrive at the appropriate overall grade modifier level and to identify a default rating value. The default rating value may be modified up or down by one percent based on functional scale, an assessment of impact on daily living activities.⁷

ANALYSIS

In the October 22, 2012 decision, the Board found that Dr. Wujciak did not properly apply Table 15-23 with respect to right arm impairment. With respect to the left arm, the Board also finds the opinion of Dr. Wujciak is of diminished probative value. Dr. Wujciak opined that the grade modifiers for test results and history were “0 to 1.” As the Board noted in the prior decision, Table 15-23 does not provide a range or sliding scale of “0 to 1” with respect to grade modifiers. The physician must choose one of the grade modifiers from Table 15-23 for test results, and history and physical findings, based on the examination and medical record.⁸ There is no provision under Table 15-23 for the method used by Dr. Wujciak. The Board finds Dr. Wujciak did not provide a rationalized medical opinion on the issue.

The case was referred to an OWCP medical adviser for an opinion as to permanent impairment. As the Board noted in the prior decision, it is well established that the referee physician, not the medical adviser, must resolve the issue presented.⁹ The Board also notes that although the medical adviser stated that, if there is a normal physical examination, there is no impairment, under Table 15-23 arm impairment can be established with normal physical findings.¹⁰ Table 15-23 allows up to a three percent permanent impairment with normal physical findings. The case will be remanded to OWCP for proper resolution of the conflict pursuant to 5 U.S.C. § 8123(a). After such further development as OWCP deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds the case is not in posture for decision and must be remanded to OWCP for further development of the medical evidence.

⁶ A.M.A., *Guides* 448-50.

⁷ *Id.*

⁸ Grade modifiers for test findings, history and physical findings are determined and then averaged to determine the final grade modifier. A physician can assign a grade modifier of 1 or 0 for normal physical findings. In either case an impairment could be established after the grade modifiers for test findings and history are determined. A.M.A., *Guides* 449, Table 15-23.

⁹ *W.C.*, Docket No. 11-659 (issued March 22, 2012); *Thomas J. Fragale*, 55 ECAB 619 (2004).

¹⁰ A.M.A., *Guides* 449, Table 15-23.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 7, 2012 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: January 8, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board